IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LUZ MARIA ROBERTS	:	**CIVIL ACTION**
v.	:	
GHS-OSTEOPATHIC INC.-PARKVIEW HOSPITAL	:	**NO. 96-5197**

M E M O R A N D U M

WALDMAN, J. **June 19, 1997**

I. BACKGROUND

Plaintiff asserts claims under Title VII, the Pennsylvania Human Relations Act ("PHRA") and 42 U.S.C. § 1981 alleging that, because of her "Mexican nationality," she was terminated from her employment following an investigation of a patient's suicide while other non-Mexican-American employees who were also culpable were suspended for three days without pay. Presently before the court is defendant's motion for summary judgment.

II. LEGAL STANDARD

In considering a motion for summary judgment, the court must determine whether the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, show there is no genuine issue as to any material fact, and whether the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56 (c). Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986); Arnold-Pontiac-GMC, Inc. v. General Motors Corporation, 786 F.2d 564, 568 (3d Cir. 1986).

Only facts that may affect the outcome of a case under applicable law are "material." Anderson, 477 U.S. at 248.

All reasonable inferences from the record must be drawn in favor of the non-movant. Id. at 256. Although the movant has the initial burden of demonstrating an absence of genuine issues of material fact, the non-movant must then establish the existence of each element on which it bears the burden of proof. J.F. Feeser, Inc. v. Serv-A-Portion, Inc., 909 F.2d 1524, 1531 (3d Cir. 1990), cert. denied, 499 U.S. 921 (1991) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)). From the competent evidence of record, the pertinent facts as uncontroverted or construed in a light most favorable to plaintiff are as follow.

III. FACTS

Plaintiff is a Mexican-American. She worked as a registered nurse for GHS-Osteopathic Inc.-Parkview Hospital ("Parkview") from 1977 until March 1 1995.

On Thursday, February 23, 1995, plaintiff worked the 7:00 a.m.-3:00 p.m. day shift in the Mental Health Unit ("MHU") with Barbara McCammitt, a Mental Health Technician ("MHT"), and Birder Harris, the day shift charge nurse. In the morning of February 23, 1995, Lisa Walzer, an emergency room intake worker, informed plaintiff that a patient who had attempted suicide was coming to the MHU. This patient was brought to the emergency

room at Parkview at 4:37 a.m. on February 23, 1995 with cuts on both wrists.[1]

The patient arrived in the MHU at 10:45 a.m. In accordance with a prearranged rotation, Ms. Harris was assigned the first MHU patient of the day shift. Because she speaks Spanish, however, plaintiff told Ms. Harris that she would admit the patient since he only spoke Spanish. The patient was plaintiff's responsibility for the day shift.

Ms. Harris directed Ms. McCammitt to check the patient's vital signs and complete a Record of Personal Property. Ms. McCammitt noted on this record that the patient had a belt, but she did not take it from him. Ms. McCammitt gave the patient's vital sign information and Record of Personal Property to Ms. Harris by 11:00 a.m. A few minutes after Ms. McCammit checked the patient, plaintiff entered his room.

After interviewing the patient for about 30 minutes, plaintiff placed him on suicide precaution.[2] Plaintiff did not tell Ms. McCammitt that the patient had been placed on suicide precautions or otherwise speak with her at any time during the

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1. The patient was a 36 year old male. While his name is discernible from the record, the parties intentionally refer to him only as "the patient" throughout their discovery and briefs. The court similarly sees no reason to reveal his name in this opinion.

2. Suicide Precaution involved a heightened level of observation by MHU staff that was implemented whenever a physician or nurse believed a patient was at risk of attempting suicide.

shift about the patient. Plaintiff did not review the Record of Personal Property Ms. McCammitt had completed.

Plaintiff noted on the patient's Suicide Precaution Form that she first came into contact with this patient in the hallway at 10:45 a.m. and checked on him in his bedroom at 11:00 a.m. Plaintiff's first entries on this form were made at approximately 12:00 p.m. Plaintiff did not inform Ms. Harris that she placed the patient on suicide precaution until she gave Ms. Harris the patient's Suicide Precaution Form at approximately 1:00 p.m.[3] The MHU staff conducted a check of the patient every 15 minutes from 10:45 a.m. until 7:15 p.m. Plaintiff performed each such check from 10:45 a.m. through 3:45 p.m. The patient's chart shows that Dr. Brandoff, the treating physician, issued orders at 1:00 p.m. to administer antidepressive and antipsychotic medications, however, these orders were not given to Ms. Harris until 5:00 p.m. The medications were never administered to the patient.

A Parkview Department of Nursing Contraband Policy approved on June 8, 1993 by Patricia Rudzinski, Vice President for Patient Care Services, provides that a patient "admitted on safety precautions" is not permitted to retain, inter alia, a belt. A Parkview Department of Nursing Suicide Precaution Form Guideline bearing an approval date of June 8, 1993 and the

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3. Plaintiff states that she did not tell the charge nurse that she placed the patient on suicide precaution because the charge nurse "should have already known" or "should have assumed" that plaintiff had done so.

signature of Ms. Rudzinski provides that "[s]taff initiating precaution must check off contraband check has been completed."

Plaintiff avers that she was unaware of this Guideline at the time and never saw a copy of it prior to her termination. Plaintiff does acknowledge she was aware that a staff member initiating suicide precautions was responsible for checking to ensure that the patient had no contraband. She also acknowledges her awareness of and access to the actual Suicide Precaution Form which contains a box to check to confirm that a contraband search has been completed. Plaintiff initiated a suicide precaution on the patient, but did not ensure that he had no contraband or check the box on the Suicide Precaution Form that a contraband search had been done.

Plaintiff and Ms. McCammitt completed their shift around 3:30 p.m. and were replaced by Karen Lopez, Registered Nurse ("RN"), and Kelly Bellas, MHT.[4] Ms. Harris told Ms. Lopez and Ms. Bellas that the patient was on suicide precaution, but did not tell them that he had a belt. Parkview Department of Nursing Policy did not require that further contraband checks be done at each shift change. In the early evening, Ms. Bellas overheard the patient say something about not wanting to live any longer, but when she conducted the 7:00 p.m. check the patient was asleep in his bedroom. When Ms. Bellas returned for the 7:15

4. Ms. Harris ended her shift as charge nurse during that shift change, but remained on duty until 7:00 p.m. Ms. Lopez assumed the responsibilities of charge nurse after the shift change.

p.m. check, she found the patient lying in his bathroom with a belt around his neck. The patient was reported dead sometime between 7:30-8:00 p.m.

On Friday, February 24, 1995, plaintiff, Ms. McCammitt, Ms. Harris, Ms. Lopez and Ms. Bellas were all suspended pending an investigation of the patient's suicide. Also on February 24, 1995, Ms. Rudzinski, Dawn Benner, Nurse Manager of Mental Health[5], Jennifer Brown, Vice President of Human Resources and Sandra Sacks, Esquire, Risk Manager, met to discuss how to proceed with the investigation. They decided that the MHU staff members who were working in the MHU during the patient's stay should be interviewed.

Ms. Benner, Ms. Rudzinski and Ms. Sacks then proceeded together to interview plaintiff, Ms. McCammitt, Ms. Harris, Ms. Lopez and Ms. Bellas.[6] On February 24, 1995, plaintiff was interviewed by Ms. Benner, Ms. Rudzinski and Ms. Sacks. Ms. Rudzinski asked a majority of the questions. Plaintiff was not asked about her national origin.[7]

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5. Ms. Benner's title has recently been changed to Clinical Director of Behavioral Health Services.

6. Plaintiff asserts that Ms. Harris was not interviewed until after a decision to terminate plaintiff was made on February 28, 1995. In so doing, plaintiff mischaracterizes the deposition testimony of Ms. Harris. It appears that Ms. Harris was questioned on March 1, 1995. It is uncontroverted, however, that Ms. Harris was also interviewed and asked numerous questions regarding the suicide by Ms. Rudzinski, Ms. Sacks and Ms. Benner on February 24, 1995.

7. Plaintiff asserts that Ms. Benner made no notes of the
(continued...)

On Monday, February 27, 1995, Ms. Benner, Ms. Rudzinski, Ms. Sacks, Ms. Brown and Patricia McLaughlin, Assistant Vice President for Patient Care Services, met for several hours to discuss each MHU staff member's involvement in the patient suicide. The entire group concluded that plaintiff, Ms. McCammitt, Ms. Harris, Ms. Lopez and Ms. Bellas should all be terminated. Later on February 27, 1995, Ms. Benner, Ms. Rudzinski, Ms. Sacks, Ms. Brown and Ms. McLaughlin met with Ernest Perilli, Vice President for Operations, and Bernadette Mangan, President. Ms. McLaughlin made the recommendation that all five employees be terminated. Ms. Mangan wanted to reexamine each employee's involvement in the incident before imposing discipline.[8]

On February 28, 1995, Ms. Benner, Ms. Rudzinski, Ms. Sacks, Ms. Brown, Ms. McLaughlin, Mr. Perilli and Ms. Mangan met to decide what discipline should be imposed. This group again

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7. (...continued)
interviews. The actual evidence of record is only that Ms. Benner did not "keep" notes of the interviews. Ms. Rudzinski made notes which she discarded when the investigation was completed. Ms. Sacks made and preserved notes of the interviews which were reviewed by the group at subsequent meetings.

8. Defendant asserts that Ms. Mangan proposed that the final evaluation focus on any violations of hospital policies or procedures based upon advice from Michelle Volpe, the CEO of Mt. Sinai Hospital, with whom Ms. Mangan consulted and who had no knowledge of the identities or ethnicity of the Parkview employees involved. There is, however, no competent evidence of record to establish this. No testimony or affidavit of Ms. Mangan to this effect was presented. The only evidence presented on this point is the hearsay testimony of Mr. Pirelli as to what he was told by Ms. Mangan regarding advice from Ms. Volpe.

reviewed and compared each MHU staff member's conduct. They determined that plaintiff and Ms. McCammitt should be terminated because they were most culpable. They concluded that the others deserved lesser discipline because they were less culpable.

Consistent with his contemporaneous notes of the final meeting, Mr. Perilli explained the reasons for the final disciplinary decisions. He stated that the group concluded Ms. McCammitt should have initiated precautions but did not, and that plaintiff initiated precautions and then did not follow through to ensure the patient had no contraband as she should have pursuant to hospital policy. They concluded that the other three employees justifiably assumed that plaintiff did a proper contraband check when she initiated precautions and that they were not required to conduct further checks. Ms. Brown, who also kept contemporaneous notes, similarly explained that the group concluded that plaintiff and Ms. McCammitt were "most culpable or most responsible for what had happened." Ms. McLaughlin initially felt that all five MHU staff members should be terminated, but ultimately joined in the decision of the other group members.

On March 1, 1995, plaintiff and Ms. McCammitt were terminated. Ms. Benner and Ms. Brown told plaintiff she was being terminated for violating Parkview policy and procedure. Ms. Benner and Ms. Brown told Ms. McCammitt she was being terminated as a result of her role in the events leading to the patient's suicide.

Ms. Brown told plaintiff that this would not have happened "if it wasn't for the Spanish language." Plaintiff "didn't really know what [Brown] meant," but felt she was being sarcastic or demeaning. Ms. Brown explains that she was merely responding to plaintiff's lament that she only took the patient because he spoke Spanish. Ms. Brown told plaintiff that this was unfortunate but that once she took the patient, she was responsible for him.

Plaintiff's Disciplinary Action Form states that she was terminated because she "completed nursing admission assessment on [patient] and failed to ensure that all contraband had been removed after initiating suicide precautions on [patient]." Ms. McCammitt's Disciplinary Action Form indicates that she was discharged for failing to remove the patient's belt when he was admitted and not ensuring that it had been removed when he was placed on suicide precautions.

Shortly after her termination, plaintiff asked Michele Arabia, a MHU technician, Miriam Silverstein, a nurse, and another staffer, Gail Schossler, for copies of any policies they had regarding suicide precautions. Ms. Silverstein gave plaintiff a copy of the Contraband Policy. Ms. Arabia gave plaintiff a copy of a blank Suicide Precaution Form. Ms. Schossler gave plaintiff a copy of a completed Suicide Precaution Form. None of the three provided a copy of the Suicide Precaution Form Guideline.

Plaintiff was asked if she could point to any conduct by persons involved in the termination decision which evinced a bias against Mexican-Americans.

Plaintiff stated that at the interview on February 24, 1995, Ms. Rudzinski and Ms. Benner "were just kind of looking at each other" and "it just seemed strange" that Ms. Rudzinski tried to get plaintiff to say she was responsible for the deceased patient during her shift. Plaintiff acknowledges, however, that she was in fact responsible for the patient during her shift.

Plaintiff states that she believes Ms. Rudzinski focused the investigation on plaintiff because of her national origin. This belief is based on "just her demeanor" and "just a look" she had. Plaintiff acknowledged that she is "kind of sensitive" about the way people look at her and gets a "feeling" that some people look "funny" at her because of her national origin.

Plaintiff also responded that at some unspecified time in the past Ms. Benner expressed her dislike of mariachi music while a mariachi band was playing on a television set in a hospital office. Plaintiff also recounted that Ms. Benner denied plaintiff's request to split her shift on January 1, 1994 upon advice of Pat McLaughlin that administrative policy prohibited such shift splitting although plaintiff had covered part of a shift for a colleague on Labor Day of 1993. Plaintiff acknowledged in her deposition that an employee filling in for her could have been entitled to overtime pay.

While acknowledging that Ms. McCammitt felt her termination was justified, plaintiff expresses a belief that Ms. McCammitt was actually terminated to allow defendant to fire plaintiff because of her national origin. She bases this belief on "general feelings."

Plaintiff believes that the decisionmakers were "more or less kind of making a mountain out of a molehill" and that her conduct was not as culpable as the three employees who were suspended. Plaintiff responded "yes" when asked if she thought the three employees who were suspended should have been terminated and testified that she would not now believe she was a victim of discrimination if all five individuals involved had been fired. Plaintiff also responded "yes" when asked if the actions or inaction of the suspended employees with regard to the patient could fairly be characterized as "a judgment call."

IV. DISCUSSION

Plaintiff's Title VII, PHRA and § 1981 claims will be addressed collectively as the same standards and analysis are applicable to each. See Gomez v. Allegheny Health Serv., Inc., 71 F.3d 1079, 1083-84 (3d Cir. 1995), cert. denied, 116 S. Ct. 2524 (1996) (Title VII and PHRA); Griffiths v. Cigna Corp., 988 F.2d 457, 469 n.10 (3d Cir.), cert. denied, 114 S. Ct. 186 (1993) (same); Weldon v. Kraft, Inc., 896 F.2d 793, 796 (3d Cir. 1990) (Title VII and § 1981).

As this is a case of alleged disparate treatment, plaintiff's claim will be analyzed under the McDonnell

Douglas/Burdine framework. See St. Mary's Honor Center v. Hicks, 509 U.S. 502, 506 (1993); Gomez, 71 F.3d at 1084.

Plaintiff has the initial burden of establishing a prima facie case of employment discrimination. Fuentes v. Perskie, 32 F.3d 759, 763 (3d Cir. 1994). Once plaintiff does so, the burden shifts to the defendant to articulate a legitimate nondiscriminatory reason for the adverse employment decision. Hicks, 509 U.S. at 507; Fuentes, 32 F.3d at 763; Josey v. John R. Hollingsworth Corp., 996 F.2d 632, 638 (3d Cir. 1993). The plaintiff may then discredit the employer's articulated reason and show that it was pretextual from which a factfinder may infer that the real reason was discriminatory. Hicks, 509 U.S. at 508; Fuentes, 32 F.3d at 763; Josey, 996 F.2d at 638. To do so, the plaintiff must present evidence demonstrating such weakness, implausibility, inconsistency, incoherence or contradictions in the legitimate reason proffered by the employer that a reasonable factfinder could conclude the reason is incredible and unworthy of belief. Fuentes, 32 F.3d at 364-65; Ezold v. Wold, Bock, Schorr & Solis-Cohen 983 F.2d 509, 531 (3d Cir. 1992), cert. denied, 510 U.S. 826 (1993).

Where plaintiff claims her termination was the result of discriminatory discipline, she must show that (1) she is a member of a protected class, (2) the misconduct in which she engaged was comparable in seriousness to misconduct of employees outside the protected class, and (3) the discipline imposed on her was more severe than that imposed on those other employees.

Cook v. CSX Transp. Corp., 988 F.2d 507, 511 (4th Cir. 1993); Sado v. Leland Mem'l Hosp., 933 F. Supp. 490, 493 (D.Md.), aff'd, 103 F.3d 120 (4th Cir. 1996); Shirley v. James River Corp., 1996 WL 250044, *3 (D. Del. April 11, 1996); Stinson v. Delaware River Port Auth., 935 F. Supp. 531, 539-40 (D.N.J. 1996); Brown v. Westinghouse Savannah River Corp., 928 F. Supp. 1168, 1172-73 (S.D. Ga. 1996), aff'd, 110 F.3d 799 (11th Cir. 1997). See also EEOC v. Brown Painting Co., 752 F. Supp. 687, 689 (E.D. Pa. 1990) (to establish prima facie disparate treatment case plaintiff must show protected employee was disciplined more severely than similarly situated non-protected employees).

Defendant contends that plaintiff cannot establish a prima facie case since unlike the suspended employees, she violated hospital policy and as Ms. McCammitt, a non-hispanic employee, was also terminated.[9]

Plaintiff's personal belief is not sufficient to create a genuine issue of material fact concerning differential treatment. Sharon v. Yellow Freight System, Inc., 872 F. Supp. 839, 847 (D. Kan. 1994), aff'd, 107 F.3d 21 (10th Cir. 1997).

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9. In a footnote in her brief, plaintiff states that despite a seemingly hispanic surname, Ms. Lopez is not hispanic. Statements in briefs, of course, are not evidence. Moreover, there is no evidence of record that any decisionmaker knew Ms. Lopez was not hispanic or even that plaintiff was. Ms. Mangan avers without contradiction that she did not even know any of the employees under investigation. Nevertheless, the court will assume in assessing the pending motion that plaintiff was the only hispanic of the five employees disciplined and that the decisionmakers were aware of this.

It is uncontroverted that it was plaintiff who initiated suicide precautions and then failed to ensure that the patient had no contraband or to check off on the patient form that a contraband search had been done. It is uncontroverted that plaintiff had primary responsibility for the patient from the time of his admission to the MHU and throughout her shift. There is no evidence that any other MHU employee, protected or unprotected, violated pertinent Parkview policy or procedure and was treated more leniently. Plaintiff has not shown that defendant treated non-members of her protected class more favorably.

Plaintiff has similarly failed to produce sufficient evidence to discredit defendant's proffered reason for terminating her or to show that discrimination was more likely than not a determinative factor in the termination decision. See Fuentes, 32 F.3d at 764; Josey, 996 F.2d at 638.

It is uncontroverted that: plaintiff had responsibility for the deceased patient upon his admission to the MHU; plaintiff initiated suicide precautions; the person who initiates such precautions is required to check for contraband; there is a box on the patient form in which to note that such a check has been completed; plaintiff made entries on this form but did not place a checkmark in that box; hospital policy prohibits a suicidal patient from having a belt; plaintiff did not physically determine if the patient had a belt or other

contraband;[10] and, a few minutes before plaintiff's interview of the patient which resulted in initiation of precautions, Ms. McCammitt noted on an official Record of Personal Property that the patient had a belt.[11]

Plaintiff expresses the belief that the Suicide Precaution Form Guideline dated June 8, 1993 was actually a post-termination fabrication to justify her firing. Plaintiff bases this belief on her stated ignorance of the Guideline and the fact that she did not receive a copy of it in response to her requests of Gail Schossler, Michelle Arabia and Miriam Silverstein.

A plaintiff may not avert summary judgment merely by expressing a belief that damaging documents are forged or fake. U.S. v. Binzel, 907 F.2d 746, 749 (7th Cir. 1990); Sanders v. Rockland County Corectional Facility, 1995 WL 479445, *3 (S.D.N.Y. Aug. 14, 1995). See also Morpurgo v. U.S., 437 F. Supp. 1135, 1137 (S.D.N.Y. 1977). A jury could not reasonably find that defendant fabricated and predated by almost two years the Suicide Precaution Form Guideline from the fact that

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10. Plaintiff acknowledges that she did "not officially conduct a contraband check" or physically pat the patient to determine if he had a belt or any other contraband under his clothing, but states that she did observe that the patient "only came up with the clothes on his back." It is evident that some physical check is necessary to determine if a patient has a belt under a sweater, sweatshirt or other clothing or, indeed, a razor or knife in a pocket.

11. The court assumes to be true plaintiff's statement that she did not review this Record. It is nevertheless evidence from which an employer could quite reasonably conclude that the patient had a belt when plaintiff initiated suicide precautions.

plaintiff does not recall seeing it or that it was not produced for plaintiff by a technician, nurse and staffer when asked for any suicide precaution policy they had in their possession. Two of the three employees did not produce a copy of the Contraband Policy, the authenticity of which is uncontested. Moreover, plaintiff had the actual Suicide Precaution Form with a space clearly provided to note the completion of a contraband check and was admittedly aware of the policy that a nurse initiating precautions was responsible for ensuring the patient had no contraband.

Plaintiff's "general feeling" that defendant terminated another employee to justify discriminating against her is insufficient to discredit defendant's nondiscriminatory explanation. See Money v. Great Bend Packaging Co., Inc., 783 F. Supp. 563, 574 (D. Kan. 1992) (plaintiffs' "feeling" they are victims of racial discrimination fails to demonstrate material issue of fact).

Plaintiff's opinion that her involvement in the suicide did not warrant her termination is not the issue. Billet v. CIGNA Corp., 940 F.2d 812, 827 (3d Cir. 1991) (employee's disagreement with adverse decision does not demonstrate pretext). It is the employer's belief that plaintiff's conduct was more culpable than that of the MHU employees who were not terminated that is important.

An employer's decision to terminate an employee, even if unwise, unfounded or unfair, is not actionable unless the

decision was motivated by invidious discrimination. See Billet, 940 F.2d at 825 (in assessing whether employer's articulated dissatisfaction with plaintiff's job performance was pretextual "[plaintiff's] view of his performance is not at issue; what matters is the perception of the decision maker"); Billups v. Methodist Hosp. of Chicago, 922 F.2d 1300, 1304 (7th Cir. 1991) (inquiry regarding genuineness of employer's nondiscriminatory reason for terminating plaintiff "is limited to whether the employer's belief was honestly held"); Holder v. City of Raleigh, 867 F.2d 823, 829 (4th Cir. 1989) ("A reason honestly described but poorly founded is not a pretext") (citation and internal quotations omitted); Hicks v. Arthur, 878 F. Supp. 737, 739 (E.D. Pa. 1995)) (ill-informed or ill-considered decision not pretextual where employer gave honest explanation for termination), aff'd, 72 F.3d 122 (3d Cir. 1995); Doyle v. Sentry Ins., 877 F. Supp. 1002, 1009 n.5 (E.D.Va. 1995) (it is perception of decisionmaker that is relevant); Orisakwe v. Marriott Retirement Communities, Inc., 871 F. Supp. 296, 299 (S.D. Tex. 1994) ("Even where an employer wrongly believes an employee has violated company policy, it does not discriminate in violation of Title VII if it acts on that belief.") (emphasis in original).

Accepting as accurate plaintiff's version of Ms. Brown's comment about the Spanish language the meaning of which plaintiff "didn't really know," this is simply insufficient to show that Ms. Brown was motivated by a bias against Mexican-

Americans. See Ross v. Arcata Graphics Co., 788 F. Supp. 1298, 1303 (W.D.N.Y. 1992) (ambiguous remark to employee regarding her national origin insufficient to show employer motivated by national origin in discharging her). Ms. Brown's testimony that she told plaintiff regardless of the reason she accepted the patient, he was her responsibility is uncontroverted. Similarly, plaintiff's feeling that Ms. Rudzinski had some discriminatory animus because of an unspecified "look" and "demeanor" is not sufficient to show the requisite discriminatory intent. See Money, 783 F. Supp. at 574.

Even putting aside the lack of any evidence as to when the comment was made, one cannot reasonably conclude that Ms. Benner was motivated by some discriminatory animus toward Mexican-Americans from her expression of distaste for mariachi music. It simply does not follow that someone who dislikes polka music bears some animus toward Polish-Americans, that someone who disdains Calypso music is biased against West Indians, that someone who abhors the cancan is prejudiced against persons of French ancestry or that someone who finds sitar music distasteful harbors ill will toward those of Indian extraction. See Worlds v. Thermal Industries, Inc., 928 F. Supp. 115, 121 (D. Mass. 1996) (even racial comments made in plaintiff's presence insufficient to support inference decision to terminate was racially motivated absent evidence connecting comments with termination); Herron v. Allegheny Gen. Hosp., 1996 U.S. Dist. LEXIS 19847, *29-30 (W.D. Pa. Sept. 23, 1996) (discriminatory

racial animus cannot be inferred from remark about "gang" symbol on African-American plaintiff's arm); Williams v. United Parcel Serv., Inc., 1994 WL 517244, *6 (N.D. Ill. Sept. 20, 1994) (without showing employer actually relied on racial stereotypes in making employment decision, even derogatory racial comments insufficient to sustain discrimination claim), aff'd, 51 F.3d 276 (7th Cir. 1995); Betts v. McCaughtrey, 827 F. Supp. 1400, 1405 (W.D. Wis. 1993) (censorship of African-American rap music cannot be equated with discrimination against African-Americans), aff'd, 19 F.3d 21 (7th Cir. 1994).

Moreover, Ms. Benner was only one of seven people involved in the review of the patient's suicide. There is no evidence that she provided any false material information, let alone any which affected the unanimous decision. Indeed, plaintiff essentially relies on the facts as determined by defendant to argue that she was no more culpable than the other employees and did not deserve to be discharged. See Blanding v. Pennsylvania State Police, 12 F.3d 1303, 1308 (3d Cir. 1993) (even misrepresentation of facts in report of investigating employee who harbored racial bias against plaintiff insufficient to show pretext absent evidence such misrepresentations affected termination decision). Similarly, one cannot reasonably infer ethnic animus or bias from Ms. Benner's refusal to allow plaintiff to split her shift fourteen months prior to her termination upon advise from an administrator that this practice was not permitted.

V. CONCLUSION

There is no evidence that any hospital employee initiating safety precautions and failing to confirm the absence of contraband on a patient who committed suicide received lesser discipline than plaintiff. Plaintiff has not shown that she was disciplined more harshly than others not in the protected class who engaged in equally egregious or comparable conduct.

Plaintiff has not presented evidence of such weakness, implausibility, incoherence or inconsistency in defendant's stated reason for the termination reasonably to permit a finding that the reason is unworthy of credence. A reference to the role played by linguistics in the assignment of the deceased patient to plaintiff, a negative comment at some unspecified time about mariachi music, a refusal to permit shift-splitting on a holiday fourteen months earlier, someone's "look" and plaintiff's "general feelings" do not amount to evidence from which one reasonably could conclude that plaintiff was more likely than not terminated because of her national origin.

A jury simply could not reasonably find by a preponderance of the evidence on the record presented that plaintiff's national origin was a motivating or determinative factor in the decision to terminate her.

Accordingly, defendant's motion will be granted. An appropriate order will be entered.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LUZ MARIA ROBERTS	:	**CIVIL ACTION**
	:	
v.	:	
	:	
GHS-OSTEOPATHIC, INC.-	:	
PARKVIEW HOSPITAL	:	**NO. 96-5197**

O R D E R

AND NOW, this day of June, 1997, upon consideration of defendant's Motion for Summary Judgment and plaintiff's response thereto, consistent with the accompanying memorandum, **IT IS HEREBY ORDERED** that said Motion is **GRANTED** and **JUDGMENT** is **ENTERED** in the above case for defendant and against plaintiff.

BY THE COURT:

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JAY C. WALDMAN, J.